

## TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.  
CBC 2001-2

In Re Application Of:

Philip J. Lucas et al.

Serial No.  
09/809,678Filing Date  
March 14, 2001Examiner  
Jose V. ChenGroup Art Unit  
3637Invention: **DISPOSABLE/RECYCLABLE PALLET AND METHOD**TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on March 5, 2003

The fee for filing this Appeal Brief is: \$320.00

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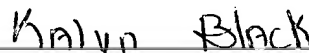
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3-17-03

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I certify that this document and fee is being deposited on March 17, 2003 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.



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CC:



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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PHILIP J. LUCAS, et al. )  
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Serial No.: 09/809,678 )  
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For: DISPOSABLE/RECYCLABLE )  
PALLET AND METHOD )

Attorney Docket: CBC 2001-2  
Examiner: Jose V. Chen  
Group Art Unit: 3637

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#10  
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**APPEAL BRIEF**

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**TABLE OF CONTENTS**

	<u>Page</u>
REAL PARTY IN INTEREST .....	1
RELATED APPEALS AND INTERFERENCES.....	1
STATUS OF CLAIMS .....	2
STATUS OF AMENDMENTS .....	2
SUMMARY OF INVENTION .....	2
ISSUES .....	4
GROUPING OF CLAIMS .....	4
ARGUMENT .....	4
Opening Statement .....	4
Background of Appellants' Invention .....	4
Discussion of References .....	6
Legal Standard for Claim Rejection Under 35 U.S.C. §103 .....	6
Summary of Argument .....	8
Allowability of Claims 1-13 .....	8
CONCLUSION .....	13
APPENDIX .....	14

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**TABLE OF AUTHORITIES**

	<b><u>Page</u></b>
<i>In re Donovan</i> , 184 USPQ 414 (CCPA 1975) .....	6
<i>In re Rinehart</i> , 189 USPQ 143 (CCPA 1976) .....	7
<i>In re Boe</i> , 184 USPQ 38 (CCPA 1974) .....	7
<i>In re Meng</i> , 181 USPQ 94 (CCPA 1974) .....	7
<i>In re Lintner</i> , 173 USPQ 560 (CCPA 1972) .....	7
<i>United States v. Adams</i> , 148 USPQ 429 (1966) .....	7
<i>In re Kamm</i> , 172 USPQ 298 (CCPA 1972) .....	7
<i>In re Donovan</i> , 184 USPQ 414, 420 (CCPA 1975) .....	8



-1-

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PALLET AND METHOD	)	

**APPEAL BRIEF**

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**GROUP 3600**

Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

Dear Sir:

This Appeal Brief is submitted in response to the final rejection of the claims mailed December 19, 2002. A Notice of Appeal was mailed March 5, 2003.

**REAL PARTY IN INTEREST**

The assignee of the entire right, title, and interest in the above patent application is Coors Brewing Company, 12<sup>th</sup> and East Streets, Golden, Colorado, 80401.

**RELATED APPEALS AND INTERFERENCES**

There are currently no related appeals or interferences known to Appellants, the Appellants' legal representatives, or the assignee which would directly affect or

Appellants' Docket No. CBC 2001-2

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be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **STATUS OF CLAIMS**

Claims 1-13 are pending in the application and are rejected. The rejection of claims 1-13 is appealed.

### **STATUS OF AMENDMENTS**

No responses or amendments have been filed subsequent to the final rejection of Appellants' claims.

### **SUMMARY OF INVENTION**

The present invention is directed to a pallet (100, Figs. 2, 3 and 6) for supporting a load (50, Fig. 2) of packages (52, Fig. 2). The pallet (100), which is described generally in Appellants' Specification at page 3, line 29 through page 5, line 16, includes a support structure (104, Figs. 2, 3 and 6) comprising flexible film (110, Fig. 3) wrapped around at least one of the layers (54, Fig. 2) of the load (50) [e.g., the lowermost layer (54a, Figs. 2 and 3)]. The flexible film (110) is wrapped around two axes (AA, BB, Fig. 3) which are generally perpendicular to one another and preferably located within the same plane (ABAB, Fig. 3) such that the flexible film (110) covers at least a majority of the layer(s) (e.g., 54a). The pallet (100) also includes a disposable/recyclable base (102, Figs. 2, 3 and 6) adhered to the flexible film (110) which is adapted to receive forks (e.g., 56, Fig. 6) of a forklift. The base

(102) may be constructed from multiple pieces (106, Figs. 3 and 4; 206, Fig. 5) of lightweight material, which is preferably a disposable/recyclable material such as plastic foam (a.k.a. Styrofoam).

The present invention is also directed to a method for producing a pallet (100, Figs. 2, 3 and 6) for supporting a load (50, Fig. 2) of packages (52, Fig. 2), which is described generally in Appellants' Specification at page 10, line 19 through page 11, line 6. The method includes the initial steps of wrapping at least one of the layers (54, Fig. 2) of the load (50) [e.g., the lowermost layer (54a, Figs. 2 and 3)] with a flexible film (110, Fig. 3) around a first axis (AA, Fig. 3), and then wrapping the same layer(s) (e.g., 54a) with a flexible film (110) around a second axis (BB, Fig. 3) which is generally perpendicular to the first axis (AA) and preferably located on the same plane (ABAB, Fig. 3). Then, a disposable/recyclable base (102, Figs. 2, 3 and 6) is adhered to the flexible film (110). If plastic foam such as Styrofoam is utilized, the base (102) may be adhered to the flexible film (110) by providing plastic foam pieces (106, Figs. 3 and 4; 206, Fig. 5) which are not fully cured, pressing the plastic foam pieces (106, 206) onto the flexible film (110), and then allowing the plastic foam pieces (106, 206) to fully cure, thereby causing the pieces (106, 206) to adhere to the flexible film (110). An alternative method utilizes plastic foam pieces (106, 206) which may be re-melted on a surface (107, Fig. 3) thereof and then adhered to the flexible film (110).

### **ISSUES**

The sole issue presented by Appellants for review is whether claims 1-13 are unpatentable under 35 U.S.C. §103(a) as being obvious over Meincer, U.S. Patent No. 3,788,462 in view of Lawson, U.S. Patent No. 3,730,417.

### **GROUPING OF CLAIMS**

Claims 1, 8 and 13 are each patentable on independent grounds as set forth in the ARGUMENT. Claims 2-7 stand or fall with claim 1. Claims 9-12 stand or fall with claim 8.

### **ARGUMENT**

#### **Opening Statement**

In an Office Action dated 12/19/02, the Examiner finally rejected claims 1-13 under 35 U.S.C. §103(a) as being unpatentable over Meincer, U.S. Patent No. 3,788,462 in view of Lawson, U.S. Patent No. 3,730,417. Appellants believe that claims 1-13 are not obvious over the cited references. Therefore, Appellants respectfully request the Board to reverse the Examiner's rejection of the claims for the reasons set forth below.

#### **Background of Appellants' Invention**

Pallets are typically used to support a load of packages, allowing the load to be lifted and transported by a lift truck such as a forklift. Several layers of packages



may be loaded onto a pallet, and the load may then be secured around its circumference using, for example, flexible wrap or shrink-wrap in order to stabilize the load on the pallet.

Some pallets have a platform upon which the packages are loaded and a base having channels adapted to receive the “forks” of a forklift. These pallets, hereinafter referred to as “platform-type pallets”, are typically constructed from wood or plastic, and may be re-used multiple times. Disadvantages to using platform-type pallets involve the cost of producing the pallet, space required for and cost of storing the pallets, cost of shipping the pallet and its load to their destination, and cost and inconvenience of shipping the pallet back from its destination so it may be reused. The shipping costs are even more significant for relatively heavier pallets (e.g., wood pallets). Due to weight restrictions, the amount of product that can be shipped with the relatively heavier pallets is reduced. Furthermore, while these pallets are generally reusable, they are subject to breakage (especially wood pallets).

A relatively thin and lightweight alternative to a platform-type pallet is known as a “slip sheet” or “slip pallet”, which is described in Appellants’ Specification at page 1, line 27 through page 2, line 10 with reference to Fig. 1. Using either a platform-type pallet or a slip pallet, damage may occur to the lowermost layers of packages during shipping due to vibration and jostling of the load.

The invention as claimed by Appellants provides a pallet that essentially functions as a disposable/recyclable platform-type pallet, while also providing a shock-absorbing effect during transport of the load which is typically not provided (or perhaps minimally provided) by conventional pallets.

**Discussion of References**

**Meincer, U.S. Patent No. 3,788,462** (hereinafter "Meincer '462") is directed to a load (26) of packages which is adapted to be used with or without a conventional pallet (10). When removed from the pallet (10), the lowermost layers (16, 18) of the load (26) act as a "base". The bottom layer (16) of the load (26) is palletized to have a smaller surface area than the next adjacent layer (18), so as to provide ledges (20) to support the forks of a forklift. Both the bottom layer (16) and the next adjacent layer (18) are wrapped in heat-shrinkable thermoplastic material (12, 14) so that these layers (16, 18) remain together and the ledges (20) stay intact when the forklift lifts the load (26).

**Lawson, U.S. Patent No. 3,730,417** (hereinafter "Lawson '417") is directed to an outer container (12) having openings (14, 16) adapted to receive forks of a forklift. On to the bottom, inside surface of the outer container (12) are a plurality of spacers (60) which space an inner container (46) away from the bottom surface of the outer container (12) so that forklift forks can be inserted into the outer container (12) beneath the inner container (46). The spacers (60) are only adhered to the bottom, inside surface of the outer container (12); the spacers (60) are not adhered to either the inner container (46) or a load inside the inner container (46).

**Legal Standard for Claim Rejection Under 35 U.S.C. §103**

The test for obviousness under 35 U.S.C. §103 is whether the claimed invention would have been obvious to those skilled in the art in light of the knowledge made available by the reference or references. *In re Donovan*, 184

USPQ 414, 420 n. 3 (CCPA 1975). It requires consideration of the entirety of the disclosures of the references. *In re Rinehart*, 189 USPQ 143, 146 (CCPA 1976). All limitations of the claims must be considered. *In re Boe*, 184 USPQ 38, 40 (CCPA 1974). In making a determination as to obviousness, the references must be read without benefit of the applicants' (or Appellants') teachings. *In re Meng*, 181 USPQ 94, 97 (CCPA 1974). In addition, the propriety of a Section 103 rejection is to be determined by whether the reference teachings appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed substitution, combination, or other modifications. *In re Lintner*, 173 USPQ 560, 562 (CCPA 1972). A reference which teaches away from the applicants' (or Appellants') invention may not properly be used in framing a 35 U.S.C. §103 rejection of the applicants' (or Appellants') claims. See *United States v. Adams*, 148 USPQ 429 (1966).

A basic mandate inherent in §103 is that a piecemeal reconstruction of prior art patents shall not be the basis for a holding of obviousness. It is impermissible within the framework of §103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. *In re Kamm*, 172 USPQ 298, 301-302 (CCPA 1972). Phrased somewhat differently, the fact that inventions of the references and of the applicants (or Appellants) may be directed to concepts for solving the same problem does not serve as a basis for arbitrarily choosing elements from references in an attempt to

fashion the applicants' (or Appellants') claimed invention. *In re Donovan*, 184 USPQ 414, 420 (CCPA 1975).

### **Summary of Argument**

Neither of the cited references, either singly or in combination, discloses or suggests Appellants' claims 1-13. In fact, these references teach away from Appellants' invention as claimed in claims 1-13 and therefore may not properly be used in framing a 35 U.S.C. §103 rejection of these claims. See *United States v. Adams*, 148 USPQ 429 (1966). Consequently, the Examiner's Section 103 rejection of the claims is improper and must be removed.

### **Allowability of Claims 1-13**

The Examiner rejected claims 1-13 as being obvious over Meincer '462 in view of Lawson '417. Appellants contend that neither of the cited references, either singly or in combination, discloses or suggests Appellants' claim 1:

1. A pallet for supporting a load of packages comprising multiple layers, said pallet comprising:
  - a) a support structure comprising flexible film wrapped around at least one of said multiple layers around a first axis and a second axis, said first axis being generally perpendicular to said second axis, whereby said flexible film covers at least a majority of said at least one of said multiple layers; and

- b) a disposable/recyclable base adhered to said flexible film which is adapted to receive forks of a forklift.

As noted above, Meincer '462 is directed to a load (26) of packages which is adapted to be used with or without a conventional pallet (10). When removed from the pallet (10), the lowermost layers (16, 18) of the load (26) act as a "base". Thus, at any given time, the "base" of Meincer '462 is either a conventional pallet (10) or the lowermost layers (16, 18) of the load, neither of which is adhered to flexible film wrapped around at least one of the layers of the load, as claimed by Appellants in claim 1. Furthermore, neither "base" [i.e., neither the conventional pallet (10) nor the lowermost layers (16, 18) of the load] of Meincer '462 is disposable/recyclable, as claimed by Appellants in claim 1. As noted above, a reference which teaches away from the applicants' (Appellants') invention may not properly be used in framing a 35 U.S.C. §103 rejection of the applicants' (Appellants') claims. See *United States v. Adams*, 148 USPQ 429 (1966). Meincer '462 teaches away from Appellants' invention as claimed in claim 1 since it requires the use of a conventional pallet or the lowermost layers of the load as a "base". Furthermore, neither "base" in Meincer '462 is disposable/recyclable as claimed by Appellants in claim 1.

Lawson '417 does nothing to make up for the deficiencies of Meincer '462. Also as noted above, Lawson '417 is directed to an outer container (12) having openings (14, 16) adapted to receive forks of a forklift. A plurality of spacers (60) are adhered to the bottom, inside surface of the outer container (12). However, the spacers (60) are not adhered to either the inner container (46) or to a load inside the

inner container (46) and therefore do not act as a “base” for any load or product placed inside the inner container (46). Thus, Lawson ‘417 does not disclose or suggest a disposable/recyclable base adhered to flexible film wrapped around at least one layer of the load, as claimed by Appellants in claim 1. Nor does Lawson ‘417 disclose or suggest a support structure comprising flexible film wrapped around at least one layer of the load around perpendicular axes as claimed by Appellants in claim 1. As noted above, a reference which teaches away from the applicants’ (Appellants’) invention may not properly be used in framing a 35 U.S.C. §103 rejection of the applicants’ (Appellants’) claims. *United States v. Adams*, 148 USPQ 429 (1966). Lawson ‘417 teaches away from Appellants’ invention as claimed in claim 1 since the spacers (60) of Lawson ‘417 are adhered only to the inner surface of the outer container (12) and therefore could not possibly be used as a “base” for either the inner container (46) or any product or load placed inside the inner container (46). In other words, when the inner container (46) (and any “load” inside the inner container) is removed from the outer container (12), the spacers (60) stay inside the outer container (12) and therefore could not possibly be used as a “base” as claimed by Appellants.

Furthermore, the combination of Meincer ‘462 and Lawson ‘417 would not produce Appellants’ claimed invention. On pages 2-3 of the final Office Action, the Examiner stated, “It would have been obvious... to modify the structure of Meincer to include an adhesively mounted base structure, as taught by Lawson since such structure is used in the same intended purpose of providing a unitary package structure...” (emphasis added). However, Appellants assert that the spacers (60) of

Lawson '417 are not used for the same intended purpose as either the pallet (10) or the lowermost layers (16, 18) of Meincer '462. As noted above, the spacers (60) of Lawson '417 are utilized to space an inner container (46) away from the bottom surface of an outer container (12) so that forklift forks can be inserted into the outer container (12) beneath the inner container (46). The spacers (60) are adhered to the bottom, inside surface of the outer container (12) and are not adhered to either the inner container (46) or to a load inside the inner container (46). Therefore, at no time do the spacers (60) of Lawson '417 act as either a "base" or a "support structure" for any product or load placed inside the inner container (46). On the contrary, the pallet (10) and lowermost layers (16, 18) of Meincer '462 are alternately utilized to provide a base which is adapted to receive forks of a forklift. Since the spacers (60) of Lawson '417 are not utilized as either a "base" or a "support structure", and the lowermost layers (16, 18) of Meincer '462 are not utilized as a "support structure", the combination of these references clearly would not produce a pallet having a support structure and a disposable/recyclable base as claimed by Appellants in claim 1.

In view of the above, Appellants believe that claim 1 is clearly allowable over the cited art. Appellants' claims 2-7 are believed to be allowable as depending, either directly or indirectly, from an allowable base claim, and further in view of the novel and nonobvious combination of elements presented therein.

With regard to Appellants' claim 8, Appellants contend that neither of the cited references, either singly or in combination, discloses or suggests this claim:

8. A method for producing a pallet for supporting a load of packages comprising multiple layers, said method comprising:

- a) wrapping at least one of said multiple layers with a flexible film around a first axis;
- b) wrapping said at least one of said multiple layers with a flexible film around a second axis which is generally perpendicular to said first axis;
- c) adhering a disposable/recyclable base to said flexible film.

The arguments above relative to Appellants' claim 1 are herein renewed. For the same reasons discussed above relative to claim 1, Appellants believe that claim 8 is allowable over the cited art. Claims 9-12 are believed to be allowable as depending from an allowable base claim, and further in view of the novel and nonobvious combination of elements presented therein.

With regard to Appellants' claim 13, Appellants contend that neither of the cited references, either singly or in combination, discloses or suggests this claim:

13. A pallet for supporting a load of packages comprising multiple layers, said pallet comprising:

- a) support means for supporting said load of packages, said support means comprising flexible film wrapped around at least one of said multiple layers around a first axis and a second axis, said first axis being generally perpendicular to said second axis, whereby said flexible film covers at least a majority of said at least one of said multiple layers; and
- b) disposable/recyclable base means adhered to said support means for receiving forks of a forklift.



The arguments above relative to claim 1 are herein renewed. For the same reasons, Appellants believe that claim 13 is allowable over the cited art.


**CONCLUSION**

For the reasons discussed above, Appellants believe that claims 1-13 are allowable over the cited art. Thus, Appellants urge the Board to reverse the Examiner's rejection of claims 1-13.

Respectfully submitted,

KLAAS, LAW, O'MEARA & MALKIN, P.C.

March 17, 2003

  
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**APPENDIX**

WE CLAIM:

1. A pallet for supporting a load of packages comprising multiple layers, said pallet comprising:
  - a) a support structure comprising flexible film wrapped around at least one of said multiple layers around a first axis and a second axis, said first axis being generally perpendicular to said second axis, whereby said flexible film covers at least a majority of said at least one of said multiple layers; and
  - b) a disposable/recyclable base adhered to said flexible film which is adapted to receive forks of a forklift.
2. The pallet of claim 1 wherein said at least one of said multiple layers is the lowermost layer of said load.
3. The pallet of claim 1 wherein said first axis and said second axis are located on the same plane.
4. The pallet of claim 1 wherein said flexible film and said base are constructed from disposable/recyclable materials.
5. The pallet of claim 1 wherein said base is comprised of multiple pieces of lightweight material.

6. The pallet of claim 5 wherein said lightweight material is plastic foam.
7. The pallet of claim 1 wherein the total surface area of said base is between about 25 and 40% of the total surface area of a bottom surface of said at least one of said multiple layers.
8. A method for producing a pallet for supporting a load of packages comprising multiple layers, said method comprising:
  - a) wrapping at least one of said multiple layers with a flexible film around a first axis;
  - b) wrapping said at least one of said multiple layers with a flexible film around a second axis which is generally perpendicular to said first axis;
  - c) adhering a disposable/recyclable base to said flexible film.
9. The method of claim 8 wherein said at least one of said multiple layers is the lowermost layer of said load.
10. The method of claim 8 wherein said first axis and said second axis are located on the same plane.
11. The method of claim 8 wherein the step of adhering a base to said flexible film comprises:
  - a) providing at least one plastic foam piece which is not fully cured;
  - b) pressing said at least one plastic foam piece onto said flexible film; and

- c) allowing said at least one plastic foam pieces to fully cure, thereby causing said at least one plastic foam piece to adhere to said flexible film.

12. The method of claim 8 wherein the step of adhering a base to said flexible film comprises:

- a) providing at least one plastic foam piece having a first surface;
- b) heating said first surface of said at least one plastic foam piece so that said first surface is tacky;
- c) pressing said first surface of said at least one plastic foam piece onto said flexible film; and
- d) allowing said first surface of said at least one plastic foam piece to cool down, thereby causing said at least one plastic foam piece to adhere to said flexible film.

13. A pallet for supporting a load of packages comprising multiple layers, said pallet comprising:

- a) support means for supporting said load of packages, said support means comprising flexible film wrapped around at least one of said multiple layers around a first axis and a second axis, said first axis being generally perpendicular to said second axis, whereby said flexible film covers at least a majority of said at least one of said multiple layers; and
- b) disposable/recyclable base means adhered to said support means for receiving forks of a forklift.